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COMPLEX LITIGATION

October 10, 2022

VIA ECF

Hon. Judith C. McCarthy
The Hon. Charles L. Brieant Jr.
Federal Building and United States Courthouse
300 Quarropas St.
White Plains, NY 10601-4150

**Re: *Hayden v. IBM, et al.*,
Case No. 7:21-cv-02485-VB-JCM**

Dear Judge McCarthy:

Pursuant to Your Honor's Individual Practices and S.D.N.Y.'s Rules for Electronic Filing

Under Seal, we write to provide notice of supplemental information relevant to Defendants' October 4, 2022, letter and to request leave to submit this information under seal.

Since the filing of our original memo, in connection with a supplemental production of documents acquired during our investigation that we have produced today, our law firm noted a document that we believe supports Plaintiff Gerald Hayden's requests for discovery of IBM's Fall Plans and Kick-off Presentations; these documents are consistent with our representations to Defendants and to the Court based on our investigation, that IBM strategy documents contain evidence that IBM relied upon and used Hayden's marketing IP/trade secret and other elements of A2E.

In their October 4, 2022 letter, Defendants stated that “[t]he requested Fall Plans are not relevant to Plaintiff's claims.” Dkt. 70 at 5. Defendants further stated that “B&FM COC [Banking and Financial Markets Centers of Competence] was part of GBS [Global Business Services] and did not produce Fall Plans.” The plain implication is that these types of documents either do not exist

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or do not contain information about intelligent workflows or other products which are alleged to be based on A2E. The IBM document filed contemporaneously under seal herewith concerning IBM “Customer Value Plays for Banking and Financial Markets” and in particular pages 4, 6 and 8 rebut Defendants’ positions and supports production of the documents sought. This is an IBM document which presumably is in Defendants’ possession. While this document refers to a Fall Plan (see page 2), it does not appear to be one. However, since IBM has taken the position that similar documents are highly confidential (a position Plaintiffs do not necessarily agree with) Plaintiffs respectfully move to submit these documents under seal in order to permit IBM to submit any arguments it may deem appropriate to keep it under seal. Plaintiff will be prepared to discuss this matter and the document further at the October 12th conference.

Respectfully submitted,

s/ David S. Stone
David S. Stone

cc: All Counsel of Record (via ECF) (encl. via email)